

REMARKS

Claims 71-87 are now pending in the above-referenced patent application. Applicants respectfully request further consideration of these claims, in view of the amendments set forth above and the following remarks.

Examiner Interview

Applicants thank the Examiner for the courtesy of a telephonic interview on July 16, 2007, during which the then-pending claims and the prior art were discussed. No agreement was reached as to the outstanding rejections. Agreement was reached that the claim amendment to claim 71 as made herein would distinguish over the Alt reference.

Cancelled Claims

Claim 84 has been cancelled to advance the prosecution of the instant case. Applicants expressly reserve the right to refile the cancelled claim, without prejudice, in a continuing application. Applicants' cancellation of this claim should not, in any way, be considered as an admission with respect to any outstanding rejections applying to such claims, and Applicants hereby expressly deny any such interpretation. Likewise, Applicants cancellation of these claims should not, in any way, be considered as a surrender of any subject matter covered by the cancelled claims or any equivalents thereof, and Applicants hereby express their intent to pursue patent coverage for such subject matter and equivalents thereof.

Amended Claims

Claim 71 has been amended to require that the pores have the shape of a sphere and to add antecedent basis to the term "material".

No new matter has been added.

While Applicants disagree with the assertions of the Final Office Action that the Alt reference anticipates previous claim 71, Applicants have amended independent claim 71 to further prosecution. Applicants' amendment of this claim should not, in any way, be considered as an admission with respect to any outstanding rejections applying to this claim, and Applicants hereby expressly deny any such interpretation. Likewise, Applicants' amendment of this claim should not, in any way, be considered as a surrender of any subject matter covered by the

amended claim or any equivalents thereof, and Applicants hereby express their intent to pursue patent coverage for such subject matter and equivalents thereof.

Rejection Under 35 U.S.C. § 102(e)

The Examiner rejected claims 71-72, 74, 76, 78-79, and 82-84 under 35 U.S.C. 102(e) as being anticipated by Alt (U.S. Patent Application Publication No. 2004/0039438 A1).

Applicants respectfully traverse the rejection.

Independent claim 71 recites, a prosthetic material including a scaffold having interconnecting, uniformly shaped pores, the pores having the general shape of a sphere; and an ingrowth matrix within the pores, wherein the ingrowth matrix comprises a concentration gradient of a material. Applicants respectfully submit that Alt lacks, among other things, a teaching or suggestion of pores having the general shape of a sphere.

Applicants respectfully submit that Alt fails to teach or suggest a pore having the general shape of a sphere. Although Alt teaches a porous layer that is composed of metal particles that are “of or pertaining to a sphere” and bonded together, Applicants respectfully submit that the spaces between the particles (the “pores”) do not generally have the shape of a sphere

For at least the reasons discussed herein above, Applicants respectfully submit that claims 71-72, 74, 76, 78-79, and 82-83 are neither taught nor suggested by Alt.

Reconsideration and withdrawal of the rejections under 35 U.S.C. 102 are respectfully requested.

Rejections Under 35 U.S.C. § 103(a) (Alt)

The Examiner rejected claims 73, 75, 77, 80, 81, and 85-87 under 35 U.S.C. 103(a) as being unpatentable over Alt (U.S. Patent Application Publication No. 2004/0039438 A1).

Applicants respectfully traverse the rejection.

Claims 73, 75, 77, 80, 81, and 85-87 depend directly or ultimately from independent claim 71. Applicants respectfully submit that claims 73, 75, 77, 80, 81, and 85-87 are patentable over Alt for at least the reasons discussed herein above for the patentability of claim 71, in addition to reasons related to the additional subject matter recited in each.

Reconsideration and withdrawal of the rejections under 35 U.S.C. 103(a) are respectfully requested.

Equivalents

The amendments to the claims and the arguments presented in supplemental response to the Final Office Action have been made to claim subject matter which the Applicants regard as their invention. By such amendments, the Applicants in no way intend to surrender any range of equivalents beyond that which is needed to patentably distinguish the claimed invention as a whole over the prior art. Applicants expressly reserve patent coverage to all such equivalents that may fall in the range between applicants literal claim recitations and those combinations that would have been obvious in view of the prior art. In particular, as noted above, many of the claims have (not) been narrowed within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 USPQ2d 1705 (2002), and Applicants are therefore entitled to the full range of equivalents with respect to each of the presently-pending claims.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Applicants believe that no further fees are required in connection with the instant amendment. If necessary, however, the Examiner is hereby authorized to charge any fees required in connection with this application to Deposit Account No. 13-2546.

Respectfully submitted,

Date Submitted: July 18, 2007


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